

Exhibit F  
Declaration of Richard L. Engstrom

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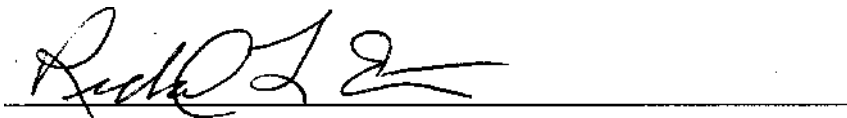
Racially Polarized Voting in San Juan County

1. I am a professor of political science and currently hold a position as a Visiting Research Scholar at the Social Science Research Institute at Duke University, where I am also a member of the Graduate Faculty in Political Science. I retired from the University of New Orleans (UNO), where I had taught since 1971, in May 2006 as a University Research Professor. I had also served as the Endowed Professor in Africana Studies at UNO from 2003 through 2005.
2. I have published articles in the American Political Science Review, American Journal of Political Science, Journal of Politics, Polity, Western Political Quarterly, Social Science Quarterly, Legislative Studies Quarterly, Law and Society Review, Asian Survey, Electoral Studies, Journal of Law and Politics and other journals and books. My book *Debating Electoral Reform and Minority Rights*, co-authored with Mark Rush, was published in 2001 by Rowan and Littlefield.
3. I am or have been a member of the editorial boards of the Journal of Politics, State and Local Government Review, and Public Administration Quarterly. I won the university-wide Career Achievement Award for Excellence in Research at UNO in 1985. I was a Fulbright Professor at National Taiwan University and National Chengchi University in 1981-82, Fulbright Professor at University College Galway in Ireland in 1985-86, Senior Research Fellow at the Institute of Irish Studies at the Queen's University of Belfast in 1990, David Bruce Fellow at the University in Keele in England in 1993, Visiting Fellow at the Australia Defense Force Academy in 1998, and Program Visitor at the Australian

National University in 2005. I was a consultant with the Center for Civil Rights at the University of North Carolina Law School in 2006-2007.

4. I served two terms as the chair of the Representation and Electoral Systems Section of the American Political Science Association from 1993-1997. My current research interests concern redistricting in Australia and redistricting reform in the United States. My full C.V. is attached as Exhibit 1.
5. Attached is a true and correct copy of my expert witness report, submitted on August 31, 2015 in *Navajo Nation v. San Juan County, UT*, Case No. 2:12-cv-00039-RS. The report discusses the extent to which elections in San Juan County are characterized by racially polarized voting.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of July, 2016.

A handwritten signature in black ink, appearing to read "Richard L. Engstrom", is written over a horizontal line.

Richard L. Engstrom, Ph.D

# Exhibit 1

Exhibit 1

**VITA**  
**RICHARD L. ENGSTROM**

May 2016

OFFICE

Center for the Study of Race, Ethnicity,  
and Gender in the Social Sciences  
Social Science Research Institute  
Duke Box 90420  
Duke University  
Erwin Mill  
Durham, NC 27705  
Phone:(504-756-1478) Fax:(919)-681-4183  
E-Mail Address = [richard.engstrom@uno.edu](mailto:richard.engstrom@uno.edu)  
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HOME

23 Banbury Lane  
Chapel Hill, NC 27517  
Phone = (504)-756-1478

PERSONAL AND EMPLOYMENT INFORMATION

Born May 23, 1946. Married to former Carol L. Verheek. Four children: Richard Neal, born 3/10/70; Mark Andrew, born 1/14/73; Brad Alan, born 3/31/77; and Amy Min, born 8/18/84.

Assistant Professor of Political Science, University of New Orleans, 1971-74; Associate Professor, 1974-1979; Professor, 1979-2006; Research Professor, 1987-2006, Endowed Professor of Africana Studies, 2003-2005.

Chairperson, Department of Political Science, University of New Orleans, 1976-1979. Coordinator of Graduate Studies, 1990-1992, 1993-2006.

Consultant, Center for Civil Rights, School of Law, University of North Carolina, Chapel Hill, 2006-2007.

Research Associate, Center for the Study of Race, Ethnicity, and Gender in the Social Sciences (REGSS), Duke University, 2013 – present. Visiting Research Fellow, REGSS, 2008 - 2012. Visiting Professor of Political Science, Duke University 2008 - present.

Fulbright-Hays Professor, National Taiwan University and National Chengchi University, and Visiting Research Fellow, Institute of American Culture, Academia Sinica, Taipei, Taiwan, R.O.C., 1981-82.

Fulbright-Hays Professor, University College, Galway, Ireland, 1985-86.

Senior Research Fellow, Institute of Irish Studies, the Queen's University of Belfast, 1990.

David Bruce Fellow, Bruce Centre for American Studies, University of Keele, England, 1993.

Visiting Fellow, School of Politics, Australian Defence Force Academy, Canberra, Australia, 1998.

Program Visitor, Political Science Program, Research School of Social Sciences, Australian National University, Canberra, Australia, June-July, 2005.

Recipient, UNO Alumni Association's Career Distinction Award for Excellence in Research, December 1985.

Recipient, George W. Lucas Community Service Award, New Orleans NAACP, 1993.

Recipient, Emmitt J. Douglass Memorial Award, Louisiana NAACP, 2013.

#### FORMAL EDUCATION

Ph.D., University of Kentucky, 1971

M.A., University of Kentucky, 1969

A.B., Hope College (Holland, Michigan), 1968.  
(recipient of Class of '65 Political Science Award, 1968.

#### PRIMARY TEACHING FIELDS

Election Systems, Urban and Minority Politics, Legislative Process, American Politics.

#### PROFESSIONAL ACTIVITIES

Member, Election Review Committee, American Political Science Association, 2003-2004.

Chair, Section on Representation and Electoral Systems, American Political Science Association, 1993-95, 95-97. Section Board, 1993-present.

Book review editor, American Review of Politics, 1995-present.

Lecture tour, under sponsorship of United States Information Agency, of Tanzania, Ethiopia, Kenya, Malawi, and Liberia, January, 1994. Topics include, among others, comparative election systems, legislatures within democratic regimes, and race and gender in contemporary politics.

Associate Member, Centre for the Study of Irish Elections, University College Galway.

Member, Board of Editors, Public Administration Quarterly 1977- present.

Member, Editorial Board, Journal of Politics, 1988-1993.

Member, Board of Editors, State and Local Government Review, 1988- 1990.

Member, Committee on the Status of Blacks, Southern Political Science Association, 1991-1996.

Treasurer, Southwestern Political Science Association, 1981 (position resigned during term due to Fulbright Lectureship).

Chair, Harold D. Lasswell Award Committee, American Political Science Association, 1995-1996 (best dissertation in public policy).

Chair, Ted Robinson Award Committee, Southwestern Political Science Association, 1995-1996 (best research project in minority politics by a graduate student).

Member, Nominating Committees, Southern Political Science Association, 1980; Louisiana Political Science Association, 1981, Study Group on Comparative Representation and Electoral Systems, International Political Science Association, 1988, Section on Representation and Electoral Systems, American Political Science Association, 1999.

Member, Chastain Award Committee, Southern Political Science Association, 1978. V.O. Key Award Committee, Southern Political Science Association, 1990. Ted Robinson Memorial Award Committee, Southwestern Political Science Association, 1995, 1996 (chair). Hallett Award Committee, Section on Representation and Electoral Systems, American Political Science Association, 1999, 2000.

Member, Program Committee (Urban Politics Section), 1976 Annual Meeting of the Southern Political Science Association. Program Committee (Urban Politics Section), 1992 Annual Meeting of the Midwest Political Science Association. Program Committee (Representation and Electoral Systems Section), 1994 Annual Meeting of the American Political Science Association. Program Committee (Representation and Electoral Systems Section), 2002 Annual Meeting of the American Political Science Association.

Member, Membership Committee, Southwestern Social Science Association, 1973-74.

Presented papers at meetings of the American Political Science Association, International Political Science Association, Midwest Political Science Association, Southern Political Science Association, Southwestern Political Science Association, Louisiana Political Science Association, Citadel Symposium on Southern Politics, International Society of Political Psychology, Harvard University Computer Graphics Week, Australian-New

Zealand Academy for the Advancement of Science. Formal papers also presented at programs at Tulane University, Sagamon State University, University of Keele (England), Rice University, and Chief Justice Earl Warren Institute on Law and Social Policy, University of California School of Law.

Chaired panels at meetings of the American Political Science Association, Southern Political Science Association, Midwest Political Science Association, Southwestern Political Science Association, and International Political Science Association.

Served as discussant for panels at meetings of the American Political Science Association, Midwest Political Science Association, Southern Political Science Association; Southwestern Social Science Association; Louisiana Political Science Association; Institute of American Culture, Academic Sinica (Taiwan), and International Political Science Association.

Reviewed manuscripts for the American Political Science Review, American Journal of Political Science, Journal of Politics, Political Research Quarterly, Polity, Social Science Quarterly, Legislative Studies Quarterly, American Politics Quarterly, Urban Affairs Review, Electoral Studies, Election Law Journal, Political Analysis, National Political Science Review, Women and Politics, Southeastern Political Review, State and Local Government Review, Public Administration Review, Public Administration Quarterly, American Review of Politics, Presidential Studies Quarterly, Law and Policy, Journal of Policy History, Public Administration and Management, Journal of Women, Politics, and Policy, Du Bois Review, Howard University Press, Stanford University Press, and Northern Illinois University Press.

Recipient of grant from Pacific Cultural Foundation, Taipei, Taiwan to support project entitled "The Legislative Yuan: A Study of Legislative Adaptation" (1982).

Recipient of grant from private sources, New Orleans, to support a study of mayoral tenure in large American cities (1983).

Recipient of grant from Southern Regional Council, Atlanta, Georgia, to conduct exit poll of cumulative voting election in Chilton County, Alabama (1992).

Recipient of grants from Louisiana Education Quality Support Fund, Fellowship Funding for Superior Graduate Students, 1992 (1993-1997) \$48,000; 1996 (1997-2001) \$64,000; 1997 (1998-2002) \$48,000; 1998 (1999-2003) \$56,000.

Reviewed grant proposals for National Science Foundation programs in Political Science and Law and Social Sciences, and National Science Foundation graduate fellowship applications for the National Research Council.

Served as mentor in Southern Regional Council's Voting Rights Fellowship Program to Jason F. Kirksey, 1992-1993, and Dr. Olethia Davis, 1993-1994.



United Nations Consultant on Election Systems and Constituency Delimitation, National Election Commission of Liberia, UN Mission in Liberia, 2004.

COMMUNITY AND UNIVERSITY SERVICE

Consultant, Charter Task Force Committee, New Orleans, 2000. Preparation of Term Limits: A Report to the Charter Task Force Committee, February, 2000.

Interviewed on term limits issue on “Crescent City Close Up,” public affairs program on three radio stations, WNOE, KKND, and KUMX, March 19, 2000.

Participant, Roundtable on At-Large Elections for the Internet Corporation for Assigned Names and Numbers (ICANN), sponsored by Common Cause, the Center for Democracy and Technology, and the Markle Foundation, at the Kennedy School of Government, Harvard University, February 9, 2000.

Member, Board of Directors, Concern International Charities, 1998-2003.

Chairperson, Taskforce on Civil Service, Mayor-Elect Ernest Morial's Transition Office (New Orleans), 1977-78.

Member, Chachere Subcommittee of UNO Diversity Cabinet, 2003-2004.

Member, Graduate Council, UNO, 1975-76, 1994-95, 2006.

Member, Research Council, UNO, 1995-97, 2005.

Member, International Student Recruitment Committee, UNO, 1993-96.

Chairperson, Search Committee for Vice Chancellor for Research and Graduate Studies and Dean of the Graduate School, UNO, 1987-88.

Chairperson, Search Committee for Graduate Dean, UNO, 1978-79.

Member, University Budget Committee, UNO, 1983-84.

Member, Liberal Arts Advisory Committee, UNO, 1975-76, 1982-84.

Member, Academic Planning Committee, UNO, 1982-1988.

Member, Faculty Council Committee on Faculty Honors, UNO, 1985-1990.

Member, Committee on Research, UNO Self-Study, 1972-73; 1982-83.

Member, Dean's Advisory Committee on Academic Planning, College of Liberal Arts, UNO, 1983-84.

Member, University Senate, UNO, 1975-77; 1980-81; 83-85; 87-91.

Member, Steering Committee, Legal Division, New Orleans Chapter, American Foundation for Negro Affairs, 1977-79.

Service as expert witness in numerous vote dilution cases in federal courts. Employed by the United States Department of Justice, Lawyers' Committee for Civil Rights Under Law, NAACP Legal Defense and Educational Fund, Center for Constitutional Rights, Mexican-American Legal Defense and Educational Fund; Native American Rights Fund, and other organizations. Served as court-appointed expert for the remedial portion of Williams v. City of Dallas, United States District Court for the Northern District of Texas, Dallas Division, 1991. Service as Special Master for the remedial portion of Harper v. City of Chicago Heights, United States District Court for the Northern District of Illinois, Eastern Division, 2002-2004.

#### INVITED LECTURES / PRESENTATIONS (Since 1986)

1986: McGee College, University of Ulster - "The Reagan Elections: Realignment or Dealignment?" and "The Contemporary Voting Rights Issue in American Politics"

The Queen's University of Belfast - "The Reagan Elections: Realignment or Dealignment?" and "The Contemporary Voting Rights Issue in American Politics"

University of Keele - "The Contemporary Voting Rights Issue in American Politics"

University College Dublin - "The Contemporary Voting Rights Issue in American Politics" (4/30/86).

University College Galway - "The Reagan Elections: Realignment or Dealignment?"

1987: Southern University - "The Equal Protection Clause and Electoral Reapportionment" (4/8/87).

APSA Summer Institute for Black Students, Louisiana State University - "The Political Scientist as Expert Witness" (7/26/87).

NAACP Legal Defense Fund, Conference on Voting Rights, San Antonio, Texas - "Cumulative and Limited Voting as Remedies for Minority Vote Dilution."

1988: College of William and Mary - "The Contemporary Voting Rights Issue" and "The Role of Social Scientists in Voting Rights Litigation"

University of Queensland - "One Vote, One Value: The U.S. Experience After 25 Years" (5/24/88).

Griffith University (Brisbane) - "One Vote, One Value: The U.S. Experience After 25 Years" (5/25/88).

1989: Tulane University - "Frontiers of Voting Rights: Vote Dilution in Judicial Elections" (3/9/89).

Lamar University - "Voting Rights: A Retrospective" (10/30/89).

Oklahoma State University - "Frontiers of Voting Rights" (November/10/89).

Prairie View A and M University - "Reapportionment and Black Political Power" (11/16/89).

1990: The Queen's University of Belfast-Institute of Irish Studies, "The Irish Election System: Manipulation and Reform" (3/13/90); Department of Politics, "The Reagan Presidency: An Assessment" (3/8/90).

Brookings Institution - "Social Scientists and the Voting Rights Act" (10/19/90).

Lyndon Baines Johnson Library (Austin, Texas) - "The Evolution of the Voting Rights Act of 1965" (10/29/90).

1991: University of Texas at Dallas - "Redistricting the Dallas City Council" (3/8/91).

United States Department of Justice, Voting Section - "Alternative Election Systems" (3/15/91).

Stetson University School of Law - "Alternative Election Systems as Remedies for Minority Vote Dilution" (4/27/91).

Norfolk State University - "Election Analyses in Voting Rights Litigation" (6/15/91).

1992: University of Colorado, Summer Workshop in Urban Politics - "Race and Voting in Judicial Elections: New Orleans as a Case Study Setting" (7/9/91).

Harold Washington College, Chicago - "Political Science Research and Testimony in the Miami-Dade County Core" (9/5/92 - not presented to illness).

Southern Regional Council, Atlanta, Georgia - "Exit Polls and Voting Rights Litigation" (10/2/92).

1994: Lecture tour of Tanzania, Ethiopia, Malawi, and Liberia for United States Information Agency, January, 1994.

National Conference of State Legislators, Annual Meeting, New Orleans - "Redistricting and the Courts" (7/26/94)

1995: Department of International Politics, Peking University, "Constitutional Law, Comparative Electoral Systems, and the Politics of Race and Gender" (10/17/95).

1997: John D. Lees Memorial Lecture, Keynote Address, 1997 Annual Meeting of the American Politics Group, (United Kingdom) Political Science Association, Keele, England, "Affirmative Action: The Election and the Election System" (1/3/97).

Alumni College, College of Liberal Arts, University of New Orleans, "Racial Gerrymandering in the 1990s: The Issues and the Alternatives" (2/1/97).

Commission on Governmental Reorganization, City of New Orleans, "Principles for Governmental Organization" (9/23/97).

Civil Rights Training Institute (Airlie Conference), NAACP Legal Defense and Educational Fund, "Alternative Election Systems in the Post-Shaw Era" (11/8/97).

## 1998

School of Politics, Australian Defence Force Academy, Canberra, "Racial Gerrymandering in the United States" (4/1/98) and "Election Systems and Minority Representation in the United States: Racial Gerrymandering and Its Aftermath" (5/29/98).

School of Political Science, University of New South Wales, Sydney, "Election Systems and Minority Representation in the United States: Racial Gerrymandering and Its Aftermath" (4/8/98).

Illinois Secretary of State's Commission on Redistricting, Chicago, IL, "Computer Generated Districting Plans: Necessary Conditions and Tie Breaking Criteria" (12/16/98).

## 2001

Carinthian Institute of Minority Affairs, Villach, Austria, "Spiders, Earmuffs, and the Mark of Zorro: Creating Electoral Opportunities for Minorities in America's Single Member District System" (5/5/01).

Bureau of Governmental Research, New Orleans, LA, "The Mayor: How Many Terms?" (10/10/01).

## 2002

Pomona College, Claremont, CA, "Spiders, Earmuffs, and the Mark of Zorro: There Must be a Better Way" (3/13/02).

Utah State University, "The Redistricting Thicket: Are There Alternatives?" Bennion Teachers' Workshop (8/9/02).

Utah State University, "Missing the Target: Priorities among Districting Constraints," Redistricting in the New Millennium: A Lecture Series, (11/26/02).

2003

Florida State University, "Missing the Target: Priorities among Districting Constraints," (1/21/03).

2004

Cleveland City Club/Cleveland State University, "Metro Reform and Minority Voting Rights," (2/25/04).

Liberian National Election Commission Consultative Assembly, Monrovia, Liberia, "Constituency Boundary Redemarcation: Concepts and Timeframes," (6/7/04).

2005

Subcommittee on the Constitution, Committee on the Judiciary, United States House of Representatives, written and oral testimony, hearing on Extension of the Preclearance Provision of the Voting Rights Act, (10/25/05).

William C. Velasquez Institute, San Antonio, TX, "Influence Districts," (11/19/05)

2006

University of West Georgia, "The Gerrymandering Problem: Lessons from Australia?" (4/3/06).

Duke University, "Racially Polarized Voting: Pervasive and Persistent in the American South," Conference on "W(h)ithering the Voting Rights Act?" (4/7/06).

International Political Science Association, Fukuoka, Japan. Roundtable on Electronic Voting. "E Voting in the U.S.," (7/13/06).

Brennan Center for Justice, New York University School of Law, "The Gerrymandering Problem: Lessons from Australia?," (8/7/06).

Short Course on The National Popular Vote Plan to Revamp the Electoral College, American Political Science Association Annual Meeting, Philadelphia, "Potential Impact of the National Popular Vote Plan on Presidential Elections and Other Electoral Reforms," (8/30/06).

American Bar Association, Administrative Law Section, "Redistricting Reform: Lessons from Australia," Washington, D.C. (10/26/06).

2008

Morehouse College, “The Gerrymandering Problem in the United States: Judicial Protection or Redistricting Commissions or Alternative Election Systems,” Voting Analysis in Mathematics and Politics: Interdisciplinary Research and Education Seminar (VAMPIRES) (4/18/08).

#### 2009

Duke University, “Response to Thomas Brunell, ‘Why Competitive Elections are Bad for America’,” Duke University Political Science Students’ Association (2/10/09).

Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, University of California at Berkeley School of Law, presenter, panel on “The Redistricting Experience: Tales from the Field,” conference on Redistricting Reform and Voting Rights: Identifying Common Ground and Challenges, UC Washington Center, (11/11/09).

#### 2010

Center for the Study of Race, Ethnicity, and Gender in the Social Sciences, Duke University Presentation on “Race and Redistricting” at the conference “Counting Race: Racial Classifications and the 2010 Census,” Duke University (3/19/10).

St. Louis University Law School, Presentation on “Cumulative and Limited Voting as Remedies for Dilutive Election Systems,” at the symposium on “Voting 45 Years after the Voting Rights Act,” (3/26/10).

Demos, Presentation on “Issues in the Post-2010 Round of Redistricting” and Discussion Leader for Session on Redistricting, “An In-Depth Discussion with Demos,” Washington, DC (9/4/10).

NAACP Legal Defense and Educational Fund, Presentation on “Prongs II and III: Necessary Preconditions under *Thornburg v. Gingles*,” at the Voting Rights and Redistricting Training Institute, Airlie Conference, Warrenton, VA (10/9/10).

Center for Democratic Performance, Binghamton University, “Influence Districts and the Courts: A Concept in Need of Clarity,” (10/28/10).

Mexican American Legal Defense and Educational Fund, Short presentation on “Racially Polarized Voting Analyses,” National Redistricting Convening, San Antonio, TX (12/9/10).

#### 2011

Columbia University, “IRCs in Comparative Perspective: Lessons from Australia?,” Conference on Do Independent Redistricting Commissions Affect Minority Representation?, New York City (12/9/11).

## 2012

Duke University, “Minorities and the New Round of Redistricting: Native Americans, Latinos, and African Americans, Plus (of course) The Great State of Texas,” Center for the Study of Race, Ethnicity, and Gender Colloquium, (3/22/12).

Georgia Perimeter College, Clarkston Campus, “Minority-Majority Districts: Their Adoption and Consequences,” (10/4/12).

## 2013

National Bar Association and Louisiana Judicial Conference, Baton Rouge, LA, “Judicial Subdistricts: Where Do We Go from Here?”, Baton Rouge, LA (2/16/13).

University of North Carolina Greensboro, “Controversies over Election Reform in North Carolina,” panel at the Twenty-Fourth Annual MPA Alumni Reunion, (11/1/13).

## 2015

National Bar Association and Louisiana Judicial Conference, Baton Rouge, LA (2/16/13). “Judicial Subdistricts: Where Do We Go From Here?”, (2/16/13).

U.S. Grant Presidential Library, Mississippi University, “Symposium: The Fifteenth Amendment from U.S. Grant to Lyndon B. Johnson’s Voting Rights Act, “Preclearance Politics in Mississippi,” (9/25/15), with Tommie Cardin.

## 2016

“Alternative Election Systems,” priming presentation 1/28/16, Roundtable on Voting Rights and Fair Representation Systems, Joyce Foundation, Rockefeller Brothers Fund, and State Infrastructure Fund, January 28-29, 2016, Airlie Conference Center, Airlie, VA..

“Can We Get the Politics Out of Redistricting? Different Approaches to Minimizing Gerrymandering, with Lessons from Australia.” Speakers Series 2015-2016. Southern University Law Center, April 9, 2016.

Numerous other presentations before groups such as the Louisiana Municipal Association; New Orleans League of Women Voters; Public Policy Forums at Southern University in Baton Rouge; Louisiana Municipal Clerks Institute; (La.) Black Legislative Caucus Institute; Robert A. Taft Institute of Government Seminars, Southern University; Special Committee on Elective Law and Voter Participation, American Bar Association; Subcommittee on Civil and Constitutional Law, United States House of Representatives Committee on the Judiciary; Institute of American Culture, Academia Sinica (Taiwan),

Foundation for Scholarly Exchange (Taiwan), and Tulane University, Department of Political Science and College of Law.

## REFERENCES

Dr. Christine L. Day, former Chair, Department of Political Science, University of New Orleans, New Orleans, LA 70148, 504-280-6266, [clday@uno.edu](mailto:clday@uno.edu).

Dr. Charles D. Hadley, former Chair, Department of Political Science, University of New Orleans, New Orleans, LA 70148, 504-810-3087, [cdhadley@gmail.com](mailto:cdhadley@gmail.com).

Dr. Kerry L. Haynie, Department of Political Science, Duke University, Durham, NC 27708, 919-660-4366, [klhaynie@duke.edu](mailto:klhaynie@duke.edu).

Dr. Baodong Liu, Associate Professor of Political Science, University of Utah, Salt Lake City, UT 84112, 801-581-6473, [baodong.liu@utah.edu](mailto:baodong.liu@utah.edu).

Dr. Michael D. McDonald, Department of Political Science, University of Binghamton, Binghamton, NY 13901 607-777-4563, [mdmcd@binghamton.edu](mailto:mdmcd@binghamton.edu).

Dr. Henry Flores, Distinguished Professor of Political Science, St. Marty's University, San Antonio, TX.

## CURRENT RESEARCH

“Districting by Independent Commissions: Lessons from Australia?” paper to be presented at the Southern Political Science Association Annual Meeting in San Juan, Puerto Rico, in January 2016, and to be included in a Mini-Symposium on Redistricting in *Social Science Quarterly* (2006).

“Precleance Politics in Mississippi,” paper to be included in a symposium on the Voting Rights Act in *Cumberland Law Review* (2006).

Preparation of paper on redistricting for a Redistricting Conference, University of Texas at Dallas, May 2016 (topic to be determined).

“Native Americans and Redistricting Issues: State Legislative Redistricting in New Mexico,” an invited submission to the *Justice Systems Journal*,

Analysis of Instance Runoff Voting Elections in North Carolina (with Michael Cobb).



## LATEST CONFERENCE PAPERS

“Influence District and the Courts: A Concept in Need of Clarity.” Initially presented at the Conference on “Lessons from the Past, Prospects for the Future: Honoring the Fortieth Anniversary of the Voting Rights Act of 1965,” Center for the Study of American Politics, Yale University, April 21-23, 2005. Expanded version forthcoming in volume edited by Daniel McCool, The Most Fundamental Right: The 2006 Reauthorization of the Voting Rights Act.

“Racially Polarized Voting: Pervasive and Persistent in the American South,” Conference on “W(h)ithering the Voting Rights Act?” John Hope Franklin Center, Duke University, April 7, 2006.

“Majority Vote Rule and Runoff Elections,” presented at a conference on “Plurality and Multi-Round Elections,” University of Montreal, June, 2006 (co-authored with Richard N. Engstrom), Montreal, June 17-18, 2006. Expanded version selected for inclusion in mini-symposium in Electoral Studies, edited by Bernard Grofman, 27 (September 2008) 407-416.

“Cumulative and Limited Voting: Remedies for Dilutive Election Systems and More,” presented at the symposium on *Voting 45 Years after the Voting Rights Act*, St. Louis University School of Law, March 26, 2010; published in the Fall 2010 edition of the St. Louis University Public Law Review.

“Political Scientists as Expert Witness,” Annual Meeting of the State Politics and Policy Association, Springfield, IL, June, 2010), with Michael P. McDonald. (Presented by Michael P. McDonald). Published in PS 44 (April 2011), 285-289.

“Social Science Expert Witness Testimony in Voting Rights Cases,” Eighth International Conference on Interdisciplinary Social Sciences, Charles University, Prague, Czech Republic, July, 2013, with Daniel McCool, Jorge Chapa, and Gerald Webster.

“The Elephant in the Room: *NAMUDNO*, *Shelby County*, and Racially Polarized Voting,” Annual Meeting of the American Political Science Association, August 2013, Chicago, IL

## PUBLICATIONS

### BOOKS

Fair and Effective Representation? Debating Electoral Reform and Minority Rights (Lanham, MD: Rowman and Littlefield, 2001) (with Mark A. Rush).

## MONOGRAPHS

Home Rule for Louisiana Parishes (Baton Rouge: Police Jury Association of Louisiana and Governmental Services Institute, Louisiana State University, 1974).

Municipal Home Rule in Louisiana (Baton Rouge: Louisiana Municipal Association and Governmental Services Institute, Louisiana State University, 1974).

Municipal Government Within the 1974 Louisiana Constitution: A Reference Guide for Municipal Officials (Baton Rouge: Louisiana Municipal Association and Governmental Services Institute, Louisiana State University, 1975).

Louisiana Mayor's Handbook (Baton Rouge: Louisiana Municipal Association and Governmental Services Institute, Louisiana State University, 1977), (with Edward Clynych and Konrad Kressley).

Mayoral Tenure in Large American Cities (New Orleans: School of Urban and Regional Studies, University of New Orleans, 1983).

## ARTICLES, RESEARCH NOTES, AND BOOK CHAPTERS

"Statutory Restraints on Administrative Lobbying -- 'Legal Fiction'", Journal of Public Law, Vol. 19, No. 1 (1970), 90-103 (with Thomas G. Walker). Reprinted in Dennis Ippolito and Thomas Walker (eds.), Reform and Responsiveness: Readings in American Politics (New York: St. Martin's Press, Inc., 1972), pp. 428-438.

"Race and Compliance: Differential Political Socialization," Polity, 3 (Fall 1970), 100-111. Reprinted in Charles S. Bullock, III, and Harrell Rogers, Jr. (eds.), Black Political Attitudes: Implications for Political Support (Chicago: Markham Publishing Co., 1972), pp. 33-44.

"Political Ambitions and the Prosecutorial Office," Journal of Politics, 33 (February 1971), 190-194.

"Life-Style and Fringe Attitudes Toward the Political Integration of Urban Governments," Midwest Journal of Political Science 15 (August 1971), 475-494 (with W.E. Lyons).

"Expectations and Images: A Note on Diffuse Support for Legal Institutions," Law and Society Review, 6 (May 1972), 631-636 (with Michael W. Giles).

"Black Control or Consolidation: The Fringe Response," Social Science Quarterly, 53 (June 1972), 161-167 (with W.E. Lyons).

"Life-Style and Fringe Attitudes Toward the Political Integration of Urban Governments: A Comparison of Survey Findings," American Journal of Political Science, 17 (February 1973), 182-188 (with W. W. E. Lyons).

"Racial Gerrymandering and Southern State Legislative Redistricting: Attorney General Determinations Under the Voting Rights Act," Journal of Public Law, Vol. 22, No. 1 (1973), 37-66 (with Stanley A. Halpin, Jr.).

"Socio-Political Cross Pressures and Attitudes Toward Political Integration of Urban Governments," Journal of Politics, 35 (August 1973), 682-711 (with W.E. Lyons).

"Candidate Attraction to the Politicized Councilmanic Office: A Note on New Orleans," Social Science Quarterly, 55 (March 1975), 975-982 (with James N. Pezant).

"Home Rule in Louisiana -- Could This Be The Promised Land?," Louisiana History, 17 (Fall 1976), 431-455.

"Judicial Activism and the Problem of Gerrymandering," in Randall B. Ripley and Grace A. Franklin (eds.), National Government and Public Policy in the United States (Itasca, IL: Peacock Publishers, Inc., 1977), pp. 239-244.

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"State Centralization Versus Home Rule: A Note on Ambition Theory's Powers Proposition," Western Political Quarterly 30 (June 1977), 288-294 (with Patrick F. O'Connor).

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## Expert Witness Report

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

**NAVAJO NATION**, a federally recognized  
Indian tribe, **LORENA ATENE**,  
**TOMMY ROCK, HARRISON**  
**(HUTCHINS) HUDGINS, WILFRED**  
**JONES, ELSIE BILLIE**, and **HERMAN**  
**FARLEY**,

Case No. 2:12-cv-00039-RS

Plaintiffs,

vs.

**SAN JUAN COUNTY**, a Utah governmental  
sub-division; **BRUCE ADAMS**, San Juan  
County Commissioner / Commission Chair;  
**PHIL LYMAN**, San Juan County  
Commissioner; **KENNETH MARYBOY**, San  
Juan County Commissioner; and **NORMAN**  
**L. JOHNSON**, San Juan County Clerk /  
Auditor,

Defendants.

**EXPERT WITNESS REPORT OF RICHARD L. ENGSTROM, Ph.D.**

RICHARD L. ENGSTROM, acting in accordance with 28 U.S.C. § 1746, Fed. R. Civ. P. 26(a)(2)(B), and Fed. R. Evid. 702 and 703, does hereby declare and say:

1. My name is Richard L. Engstrom and I am a resident of Chapel Hill, North Carolina. I am a Research Associate at the Center for the Study of Race, Ethnicity, and Gender in the Social Sciences and a Visiting Fellow in the Social Science Research Institute at Duke University. I am also a member of the Graduate Faculty in political science at Duke.

2. I started my work at Duke in 2008. Prior to that, from August of 2006 through 2007, I was employed as a consultant at the Center for Civil Rights at the School of Law, University of North Carolina at Chapel Hill. I am a former Research Professor of Political Science and Endowed Professor of Africana Studies at the University of New Orleans, where I was employed from August 1971 to May 2006. I have served two terms as the Chairperson of the Representation and Electoral Systems Section of the American Political Science Association (1993-1995, 1995-1997) and served as a member of the Executive Council for that section from 1993 to 2007. A copy of my curriculum vitae is attached as an Exhibit to this report.

3. I have done extensive research into the relationship between election systems and the ability of minority voters to participate fully in the political process and to elect representatives of their choice. The results of my research on this topic have been published in the *American Political Science Review*, *Journal of Politics*, *Western Political Quarterly*, *Legislative Studies Quarterly*, *Social Science Quarterly*, *Journal of Law and Politics*, *St. Louis University Public Law Review*, *Electoral Studies*, *Representation*, *Publius*, and other journals and books. Three articles authored or co-authored by me were cited with approval in *Thornburg v. Gingles*, 478 U.S. 30 (1986), the U.S. Supreme Court decision interpreting amended Section 2 of the Voting Rights Act. See 478 U.S. at 46 n.11, 48 n.15, 53 n.20, 55, 71. I am the co-author, with Mark A. Rush, of *Fair and Effective Representation? Debating Electoral Reform and Minority Rights* (Lanham, MD: Rowman and Littlefield Publishers, Inc. 2001). The attached curriculum vitae contains a list of all of my publications.

4. I also have testified as an expert witness in numerous cases in federal and state courts across the United States. Since 2009, I have testified at trial and/or been deposed in the following cases: *Benavidez v. Irving Independent School District* (N.D. Tex. 2009), *United*



*States v. Euclid City School District Board of Education* (N.D. Ohio 2009), *Texas Latino Redistricting Task Force v. Perry* (W.D. Tex. 2011), *Committee for a Fair and Balanced Map v. Illinois State Board of Elections* (N.D. Ill. 2011), *Egolf v. Duran* (N.M. 1st Judicial Dist. Ct. Santa Fe Cnty. 2011), *Texas v. United States* (D.D.C. 2012), *Fabela v. City of Farmers Branch* (N.D. Tex. 2012), *Romo v. Detzner* (Fla. 2d Judicial Cir. Leon Cnty. 2013), *Montes v. City of Yakima* (E.D. Wash. 2014), *Benavidez v. Irving Independent School District* (N.D. Tex. 2014), *Rodriguez v. Grand Prairie Independent School District* (N.D. Tex. 2014), *Texas Latino Redistricting Task Force v. Perry* (W.D. Tex. 2014), *Hall v. State of Louisiana* (M.D. La. 2014), and *Missouri State Conference of the National Association for the Advancement of Colored People v. Ferguson-Florissant School District and St Louis County Board of Election Commissioners* (E.D. Mo. 2015). I have also testified by deposition as a fact witness in *Backus v. South Carolina* (D.S.C. 2012).

5. I have reviewed Rule 702 of the Federal Rules of Evidence. As I understand that rule, I am an expert in election systems and their impact on minority voters.

6. Attorneys for the Plaintiffs in this matter have asked me to analyze the extent to which, if any, the candidate preferences of Native American and non-Native American voters in San Juan County, Utah, as revealed in their voting behavior, have been characterized by “racially polarized voting” (“RPV”). The Supreme Court has defined that term to refer to “a consistent relationship between [the] race of the voter and the way in which the voter votes,” or alternatively, voters within a protected minority group vote differently than the other voters.<sup>1</sup> The elections to be analyzed for this purpose are elections to county offices involving a choice

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<sup>1</sup> *Thornberg v. Gingles*, 478 U.S. 30, 54 n. 21 (1986).

between or among Native American and non-Native American candidates since 2000. Elections with this type of candidate pool are generally considered the most probative for assessing RPV.<sup>2</sup>

7. There were four such elections over this time period; three were general elections and one a primary election. They were the 2012 general election for District 1 on the County Commission, the 2010 primary election for District 4 on the School Board, the 2004 general election also for District 1 on the County Commission, and the 2002 general election for County Sheriff. The school board election was the only nonpartisan contest; the other three were partisan contests.

8. Attorneys for the Plaintiffs also have asked me to analyze the extent to which, if any, the candidate preferences of Native American and non-Native American voters in San Juan County, again as revealed in their voting behavior, differed in the general elections to countywide offices in 1990. This was a year in which Native American candidates competed against non-Native American candidates for all but one of the six countywide positions. These were partisan elections for County Assessor, Recorder, Sheriff, Treasurer, and Clerk and Auditor (a single office).<sup>3</sup>

9. I am being compensated at a rate of \$300 an hour for my work on this case.

## **RACIALLY POLARIZED VOTING**

### **DATA AND METHODS**

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<sup>2</sup> See, e.g., *Black Political Task Force v. Galvin*, 300 F. Supp. 2d 291, 304 (D. Mass. 2004), and cases cited therein. See also *Magnolia Bar Ass'n, Inc. v. Lee*, 994 F.2d 1143, 1149 (5th Cir. 1993); *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1011-12 (D.S.D. 2004).

<sup>3</sup> The exception was the uncontested election for County Attorney.

10. The data used in the analyses of the candidate preferences of Native American and non-Native American voters include the numbers of votes cast for the various candidates in each of the precincts used in the respective elections,<sup>4</sup> and the racial composition of those precincts as reflected by the total voting age population (hereinafter “VAP”) and Native American VAP within the precincts.<sup>5</sup>

11. The estimates of the candidate preferences of the different groups of voters are derived through two methodologies. One is Gary King’s Ecological Inference (“EI”) procedure, accessible through R software. This version of EI not only provides a specific, or point, estimate of a group’s support for a particular candidate, but also provides confidence intervals for that estimate. These intervals identify the range of estimates within which we can be 95 percent confident, statistically, of where the actual level of a group’s support for a candidate falls. The point estimate is the best estimate, in that it is the value most likely to be the actual value, and estimates within the range of a confidence interval are less likely to be the true value the further away they are from the point estimate.<sup>6</sup> This procedure considers the votes cast in all of the precincts within an election unit (e.g., county or geographical district).

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<sup>4</sup> These data are available from the County at [http://sanjuancounty.org/elections\\_voting\\_hm](http://sanjuancounty.org/elections_voting_hm).

<sup>5</sup> Data from the 1990, 2000, and 2010 Censuses of Population have been matched to San Juan County precincts by William Cooper, who provided this information to me. The analyses rely on the Native American VAP and total VAP as reported in the census closest to the election. In the 2010 Census, only 91 voting age residents of the county identified themselves as part Native American, leaving single race Native Americans constituting 98.1 percent of those. The respective figures for the 2000 Census are 22 and 99.1 percent. The 1990 Census did not record the number identifying as part Native American.

<sup>6</sup> This procedure is detailed in Gary King, *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data* (Princeton University Press, 1997), and is now used widely by expert witnesses in assessing racially polarized voting in voting rights cases. On the superiority of EI over ecological regression for assessing differences in the candidate preferences between or among groups of voters, which had been relied upon by the Supreme Court about 30 years ago in 1986 in *Gingles*, 478 U.S. at 52-53, see King, *A Solution*, at 15-16, and Justin de Benedictis-Kessner, “Evidence in Voting Rights Act Litigation:

12. The other methodology is homogeneous precinct (HP) analysis (also known as extreme case analysis). Precincts in which the potential electorate consists overwhelmingly of members of one group, e.g., Native Americans, are typically considered “homogeneous.” The conventional cutoff for a homogeneous precinct is 90 percent or more of a group. In the analyses for this declaration homogeneous Native American precincts are those in which 90 percent or more of the voting age population is Native American. Homogeneous non-Native American precincts are those in which 10 percent or less of the voting age population is Native American. The HP procedure simply tabulates and reports the total number of votes, expressed as the percentage of the votes, received by the respective candidates in each group of homogeneous precincts. This methodology is used along with EI in this analysis because it is straightforward and useful in areas in which minority voters and other voters are acutely segregated among precincts, as in San Juan County.<sup>7</sup>

### **RESULTS FOR BIRACIAL ELECTIONS SINCE 2000**

13. The results of the EI analyses of the elections since 2000 are reported in Table 1 at the end of the text of this declaration. This table contains the estimates of the levels of support for the various candidates among Native American and the other, non-Native American voters derived through EI.<sup>8</sup> In the left column of the Table, the years of the election, the offices at

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Producing Accurate Estimates of Racial Voting Patterns,” *Election Law Journal*, forthcoming 2015. EI was developed subsequent to that case for the explicit purpose of improving these estimates. See also D. Stephen Voss, “Using Ecological Inference for Contextual Research,” in Gary King, Ori Rosen, and Martin Tanner (eds.), *Ecological Inference: New Methodological Strategies* (Cambridge University Press, 2004), at 93 (EI “is unparalleled when applied to the actual sort of data needed for analyzing important social issues such as racial voting patterns”).

<sup>7</sup> The HP methodology also was relied upon in *Gingles*, at 52-53.

<sup>8</sup> Section 2 of the Voting Rights Act states that a protected minority is supposed to have no less opportunity to elect representatives of its choice equal to that of the “other members of the electorate.” The reference to a “white majority” in Prong III in the *Gingles* decision is a function

issue, and the names of the Native American candidates are provided. The subsequent columns contain the estimates of the levels of support provided to the candidate by the respective groups. Reported in the columns are the point estimates of the level of support by the groups for the candidates, and below the point estimates, in parentheses, are the values of the 95 percent confidence interval for each estimate. The best estimates of the voting choices of each group, the point estimates, are also reported in the text. Table 2 is structured similarly and provides the results of the HP analyses of these elections.

14. As revealed in both Tables 1 and 2, the votes cast in these elections were consistently divided along racial lines. Native American voters supported Native American candidates. The non-Native American voters shared this preference in only one of four elections however, the primary election for the District 4 seat on the school board in 2010, a district that was 97.5 percent Native American in VAP according to the 2010 Census.

#### County Commission District 1, 2012 General Election

15. The most recent of the elections was the general election held in 2012 for the District 1 seat on the County Commission. This district was 30.2 percent Native American in VAP according to the 2010 Census. A Native American candidate, Willie Grayeyes, was the nominee of the Democratic Party in this election. He competed with two non-Native American candidates, Bruce Adams, the Republican nominee, and Gail L. Johnson, an unaffiliated candidate. According to the results of the EI analysis, reported in Table 1, Mr. Grayeyes finished first among the Native American voters, receiving an estimated 58.3 percent of the their votes, compared to an estimated 30.3 percent for Mr. Adams and 11.5 percent for Ms. Johnson. Mr.

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of the data specific to that case, in that the State of North Carolina recorded voters as either white or non-white at the time, with non-whites referred to as blacks in that case. The proper

Grayeyes finished last however among the non-Native American voters, receiving an estimate of only 7.2 percent of their votes in the EI analysis. The other 92.9 percent of their votes were cast for the non-Native American candidates, with Mr. Adams estimated to have received 48.1 percent and Ms. Johnson 44.8 percent of their votes.

16. Reported in Table 2 are the results of the HP analysis of this election. These counts are consistent with the EI estimates. All but one of the eight precincts in this district is homogeneous, according to the 2010 Census data. Two are homogeneously Native American, and five are homogeneously non-Native American. Only 13 total votes were cast in the remaining precinct, which was only 0.6 percent of all the votes cast in the election. This election therefore is very appropriate for a HP analysis. As revealed in Table 2, Mr. Grayeyes received 61.8 percent of the votes cast in the homogeneous Native American precincts, compared to Mr. Adams' 34.4 percent and Ms. Johnson's 3.8 percent. In the homogeneous non-Native American precincts Mr. Grayeyes received only 7.5 percent of the votes cast, while Mr. Adams received 51.9 percent and Ms. Johnson, 40.6 percent.<sup>9</sup>

17. Mr. Grayeyes finished last overall among the three candidates, receiving 25.6 percent of the total vote. Mr. Adams won this election, receiving 45.9 percent of the votes.

#### School Board District 4, 2010 Nonpartisan Primary Election

18. The nonpartisan primary election for the District 4 seat on the school board in 2010, as noted above, was the only election analyzed in which the non-Native American voters

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comparison under the statute, however, is between the protected class and the other voters.

<sup>9</sup> The confidence interval around the EI point estimate for Mr. Grayeyes's Native American vote is large, as shown in Table 1, but the fact that the point estimates for both his Native American vote and his non-Native American vote differ little from the respective counts in the homogeneous precincts, 58.3 and 61.8 percent and 7.2 and 7.5 percent, and the fact that these homogeneous precincts include all but 13 of the 2,075 votes cast in this election (0.6 percent), enhance my confidence that the EI point estimate is close to the true percentage.

did not prefer a non-Native American candidate over a Native American candidate or candidates. This was a 97.5 percent Native American district in VAP according to the 2010 Census, and three Native American candidates sought the seat along with only a single non-Native American.

19. The Native American candidates were Elsie Dee, Howard H. Todachinnie, and John Billie. The non-Native American candidate was Michelle McCarl. Ms. Dee received the most votes from the Native American voters according to the EI analysis, an estimated 39.4 percent, while Mr. Todachinnie finished second with 23.9 percent and Mr. Billie third with 21.4 percent, for a total of 84.4 percent of the Native American votes. Ms. McCarl received the remaining 15.6 percent. The non-Native Americans provided Mr. Todachinnie an estimated 27.0 percent of their votes, Ms. Dee 26.8 percent, and Mr. Billie 24.1 percent. Ms. McCarl finished last among both groups, receiving an estimated 22.1 percent of the non-Native American vote.

20. All three of the precincts in this district were homogeneously Native American, according to the 2010 Census, and therefore this election is also very appropriate for HP analysis. The results of the HP counts for School District (“SD”) 4 are also similar to the estimates from EI. The Native American candidates received 92.7 percent of the votes cast in them, with Ms. Dee receiving the most, 46.6 percent. Mr. Todachinnie received 24.7 percent and Mr. Billie 21.4 percent. Ms. McCarl came in last in this heavily Native American district with just 7.3 percent.

21. Ms. Dee and Mr. Todachinnie received 47.2 percent and 24.5 percent respectively of the total vote in this primary, and advanced to a runoff election, which Ms. Dee won.

#### County Commission District 1, 2004 General Election

22. The third election is another one for the District 1 seat on the County Commission, the general election held for that seat in 2004. This was a two-candidate contest in

which the Native American candidate was Walter Atene, the Democratic Party nominee, and the non-Native American candidate, Bruce Adams, the Republican Party nominee. This district was 36.0 percent Native American in VAP according to the 2000 Census.

23. The results of the EI analysis, contained in Table 1, show that Mr. Atene was the candidate preferred by the Native American voters, having received an estimated 80.8 percent of their votes. His support among the non-Native American voters however is estimated to be only 14.3 percent. The counts from the HP analysis, reported in Table 2, are again consistent with the estimates from the EI analysis. Eight of the 10 precincts in this district, according to the 2000 Census, are homogeneous. This is another context in which HP analysis is very appropriate. Six were homogeneously non-Native American and two homogeneously Native American. In the Native American precincts, Mr. Atene received 77.0 percent of the votes cast, while in the non-Native American precincts he received only 12.1 percent.

24. Mr. Atene received 34.5 percent of the total votes in this election, and therefore lost to Mr. Adams.

#### County Sheriff, 2002 General Election

25. The fourth election since 2000 with a biracial choice of candidates is the general election for Sheriff in 2002. The county was 52.1 percent Native American in VAP according to the 2000 Census. This was another two-candidate contest in which the Native American candidate, Henry Lee, was the nominee of the Democratic Party, while the non-Native American candidate, Mike Lacy, was the nominee of the Republican Party.

26. The results of the EI analysis, contained in Table 1, show that Mr. Lee was the candidate preferred by the Native American voters, having received an estimated 78.0 percent of their votes. His support among the Native American voters however is estimated to be only 10.5



percent. The counts from the HP analysis, reported in Table 2, are again consistent with the estimates from the EI analysis. Seven of the 20 precincts in this election, according to the 2000 Census, were homogeneously Native American, while six were homogeneously non-Native American. In the Native American precincts, Mr. Lee received 80.5 percent of the votes cast, while in the non-Native American precincts he received only 16.9 percent.

27. Mr. Lee received 40.9 percent of the total votes in this election, and therefore lost to Mr. Lacy.

### Conclusion

28. The elections in which voters in San Juan County were presented with a choice between or among Native American and non-Native American candidates since 2000 typically resulted in racially divided candidate preferences. The Native American voters were always cohesive in their support for Native American candidates, and non-Native American voters invariably vetoed that choice when the elections were held in a context in which a majority of the VAP was not Native American.

## **RESULTS FOR THE 1990 GENERAL ELECTION**

### **FOR COUNTYWIDE OFFICES**

#### The 1990 Elections for Countywide Offices

29. As noted above, in the 1990 general election Native Americans candidates ran for five of the six countywide offices in San Juan County. All of these Native Americans ran as the nominees of the Democratic Party, and their non-Native American opponents ran as nominees of the Republican Party. The county was 51.7 percent Native American in VAP according to the Census taken that same year. The results of these elections were a shutout for the non-Native Americans. In each of the five elections, Native American voters displayed a preference,

through their voting behavior for the Native American candidate. Non-Native American voters vetoed the Native-American candidate in each of these elections.

30. Table 3 is structured in the same manner as Table 1, and contains the EI estimates for the Native American and non-Native American support for the candidates in these elections. And Table 4, structured in the same manner as Table 2, contains the results of the vote counts in the Native American and non-Native American in the homogeneous precincts across the county. Over half of the 20 precincts across the county were homogeneous according to the 1990 Census, five being homogeneously Native American and eight being homogeneously non-Native American. Once again, the HP counts are consistent with the EI estimates for each election.

31. The Native American candidate for the office of Assessor was Dan Nakai. He is estimated in the EI analysis to have received 82.5 percent of the votes cast by Native Americans, and only 8.9 percent by the non-Native American voters. He also received 82.5 percent of the votes cast in the homogeneous Native American precincts, and 14.1 percent in the homogeneous non-Native American precincts. He received 44.6 percent of the total vote and therefore lost the election.

32. The Native American candidate for the office of Recorder was Claudia I. Keith. She is estimated in the EI analysis to have received 80.1 percent of the votes cast by Native Americans, and only 4.9 percent by the non-Native American voters. She received 79.4 percent of the votes cast in the homogeneous Native American precincts, and only 6.3 percent in the homogeneous non-Native American precincts. She received 40.1 percent of the total vote and therefore lost the election.

33. The Native American candidate for the office of Sheriff was Nelson B. Begay. He is estimated in the EI analysis to have received 70.8 percent of the votes cast by Native

Americans, and only 6.8 percent by the non-Native American voters. He received 73.1 percent of the votes cast in the homogeneous Native American precincts, and only 9.4 percent in the homogeneous non-Native American precincts. He received 37.9 percent of the total vote and therefore lost the election.

34. The Native American candidate for the office of Treasurer was Julius Claw. He is estimated in the EI analysis to have received 80.3 percent of the votes cast by Native Americans, and only 5.0 percent by the non-Native American voters. He received 80.2 percent of the votes cast in the homogeneous Native American precincts, and only 7.4 percent in the homogeneous non-Native American precincts. He received 40.8 percent of the total vote and therefore lost the election.

35. The Native American candidate for the office of Clerk and Auditor was Ruby Nakai. She is estimated in the EI analysis to have received 79.7 percent of the votes cast by Native Americans, and only 8.6 percent by the non-Native American voters. She received 81.0 percent of the votes cast in the homogeneous Native American precincts, and only 10.7 percent in the homogeneous non-Native American precincts. She received 42.8 percent of the total vote and therefore lost the election.

### Conclusion

36. There were pronounced differences in the candidate preferences of Native American voters and non-Native American voters in the 1990 general elections for countywide offices that offered voters in San Juan County a choice between a Native American and non-Native American candidate. Native Americans clearly showed, through their voting behavior, a preference to be represented by Native American candidates, while non-Native Americans clearly showed, through their voting behavior, a preference to be represented by non-Native

American candidates. Each of these elections resulted in the election of the non-Native American candidate.

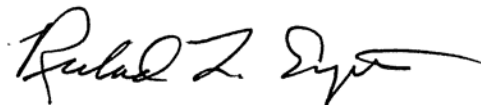
### **SUMMARY**

37. Both sets of elections analyzed above have been characterized by racially polarized voting, as that term is defined by the United States Supreme Court in *Thornburg v. Gingles*, in that in San Juan County there is “a consistent relationship between [the] race of the voter and the way in which the voter votes,” with Native American and non-Native American voters voting differently (at 54, n. 21).

Should additional documents or information be provided to me for review and analyze, I reserve the right to take these additional materials into account, modify and/or supplement my opinions, as well as to offer new opinions.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on August 31, 2015 in Durham, North Carolina.

A handwritten signature in black ink, appearing to read "Richard L. Engstrom", with a stylized flourish at the end.

Richard L. Engstrom

**Table 1: Racially Polarized Voting Analysis****Elections to San Juan County Offices since 2000****EI Estimates of the Votes for Native American Candidates**

	<u>% of Native American Votes</u>	<u>% of non-Native American American Votes</u>
<b><u>County Commission, D1</u></b>		
General Election, 2012		
Grayeyes	58.3 (9.2 – 65.6)	7.2 (3.0 – 14.5)
<b><u>School Board, D4</u></b>		
Primary, 2010		
Dee	39.4 (33.7 – 46.3)	26.8 (25.4 – 29.7)
Todachinnie	23.6 (20.5 – 29.6)	27.0 (24.2 – 29.6)
Billie	21.4 (17.0 – 30.6)	24.1 (22.0 – 27.4)
<b><u>County Commission, D1</u></b>		
General Election, 2004		
Atene	80.8 (71.7 – 89.9)	14.3 (7.0 – 24.8)
<b><u>County Sheriff</u></b>		
General Election, 2002		
Lee	78.0 (64.5 – 85.9)	10.5 (4.5 – 17.7)

**Table 2: Racially Polarized Voting Analysis****Elections to San Juan County Offices since 2000****HP Counts of the Votes for Native American Candidates**

	<u>% of Native American Votes</u>	<u>% of non-Native American American Votes</u>
<b><u>County Commission, D1</u></b>		
General Election, 2012		
Grayeyes	61.8	7.5
<b><u>School Board, D4</u></b>		
Primary, 2010		
Dee	46.6	NA
Todachinnie	24.7	NA
Billie	21.4	NA
<b><u>County Commission, D1</u></b>		
General Election, 2004		
Atene	77.0	12.1
<b><u>County Sheriff</u></b>		
General Election, 2002		
Lee	80.5	16.9

**Table 3: Racially Polarized Voting Analysis****Elections to San Juan Countywide Offices****General Election 1990****EI Estimates of Votes for Native American Candidates**

	<u>% of Native American Votes</u>	<u>% of non-Native American American Votes</u>
<b><u>County Assessor</u></b>		
D. Nakai	82.5 (69.9 – 92.5)	8.9 (4.2 – 13.9)
<b><u>County Recorder</u></b>		
Keith	80.1 (67.0 – 90.7)	4.9 (1.8 – 9.9)
<b><u>County Sheriff</u></b>		
Begay	70.8 (58.7 – 81.6)	6.8 (3.1 – 11.5)
<b><u>County Treasurer</u></b>		
Claw	80.3 (66.9 – 91.2)	5.0 (1.9 – 9.9)
<b><u>County Clerk and Auditor</u></b>		
R. Nakai	79.7 (65.8 – 90.9)	8.6 (3.6 – 14.0)

**Table 4: Racially Polarized Voting Analysis****Elections to San Juan Countywide Offices****General Election 1990****HP Counts of Votes for Native American Candidates**

	<u>% of Native American Votes</u>	<u>% of non-Native American American Votes</u>
<b><u>County Assessor</u></b>		
D. Nakai	82.5	14.1
<b><u>County Recorder</u></b>		
Keith	79.4	6.3
<b><u>County Sheriff</u></b>		
Begay	73.1	9.4
<b><u>County Treasurer</u></b>		
Claw	80.2	7.4
<b><u>County Clerk and Auditor</u></b>		
R. Nakai	81.0	10.7